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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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July 14, 2000

**VIA HAND DELIVERY**

Margalie Roman Salas, Esquire  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room TW-B204  
Washington, D.C. 20554

Re: CS Docket No. 00-96 /  
SHVIA Broadcast Signal Carriage Issues

Dear Ms. Salas:

On behalf of WDBJ Television, Inc., enclosed please find an original and four copies of WDBJ's Comments in response to the Commission's June 9, 2000 Notice of Proposed Rulemaking in the above-captioned proceeding.

If there are any questions, please contact me.

Very truly yours,



Paul J. Feldman  
Counsel for WDBJ Television, Inc.

cc: Mr. Robert Lee (w/encls.)  
Edward S. O'Neill, Esq. (w/o encls.)

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BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

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JUL 14 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Implementation of the Satellite Home	)	CS Docket No. 00-96
Viewer Improvement Act of 1999	)	
	)	
Broadcast Signal Carriage Issues	)	

**COMMENTS OF WDBJ TELEVISION, INC.**

WDBJ Television, Inc., licensee of Station WDBJ-TV, Roanoke, Virginia, ("WDBJ"), by its attorneys, hereby submits its comments in response to the Commission's June 9, 2000 Notice of Proposed Rulemaking ("*Notice*") in the above-captioned proceeding. In these comments, WDBJ urges the Commission to implement a mechanism to modify "local markets" for the purposes of the carriage obligations set forth in Section 338 of the Communications Act. Such a market modification mechanism would promote Congress' goals of placing cable and satellite operators on an equal footing, and protecting and fostering free local over-the-air television stations.

**I. Introduction**

Station WDBJ-TV is an affiliate of the CBS network, and has been licensed to and operated by WDBJ-Television, Inc. (through its parent, Schurz Communications, Inc.) for more than three decades. The Station has been the recipient of numerous service awards over the years, and is acknowledged to have maintained a state of the art operation in all respects. Yet, the mountainous terrain of the Station's home market (the Roanoke-Lynchburg DMA) and contiguous areas has limited the ability of the

Station to fully serve (with an over-the-air signal) all the viewers in its predicted service area. As a result, many viewers in the Roanoke market rely on cable TV to receive the WDBJ signal. Similarly, the smaller population in the contiguous Bluefield-Beckly-Oak Hill, West Virginia market has resulted in the lack of any CBS affiliate licensed to a community in that market. Because of the lack of such an affiliate, combined with the presence of mountainous terrain, viewers in that neighboring market also largely rely on cable carriage of the WDBJ signal for CBS programming, along with locally oriented programming that addresses the needs and interests of the Virginia-West Virginia border area.

In sum, cable carriage has been critical to allowing viewers access to the WDBJ signal, and similarly critical to the economic stability of the Station. Such economic stability has allowed the Station to provide high quality programming for free over the air to viewers who are able to receive the signal in that manner. This free service is particularly critical in the rural areas served by the Station. However, as DBS satellite service continues to increase its market share *vis a vis* cable TV, the Commission must recognize the growing importance of carriage on satellite services to the healthy maintenance of local television stations. Key to that survival is creating appropriate and realistic satellite TV markets.

**II. Implementing a Market Modification Mechanism is Necessary to Promote Congress' Goal of Protecting Free Over-the-Air Television Service, and Placing Satellite and Cable Operators on Equal Terms.**

Section 338 (a)(1) of the Communications Act, adopted as part of the Satellite Home Viewer Improvement Act of 1999,<sup>1</sup> provides that after December 31, 2002, each

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<sup>1</sup> Pub. Law 106-113, 113 Stat. 1501 ("SHVIA").

satellite carrier providing television broadcast signals under the compulsory copyright licensing system to subscribers in the local market of a television station must carry upon request all of the television stations within that local market. Section 338(h)(3) of the Act defines the term “local market” as having the meaning given in Section 122(j) of Title 17 of the U.S. Code, which defines the term to primarily mean the designated market area (“DMA”) in which a station is located, including the County in which the station’s community of license is located. Section 122(j)(2)(C) requires use of the 1999-2000 Nielsen Station Index Directory and any successor publication to define DMAs.

In paragraphs 15 and 16 of the *Notice*, the Commission notes that while Section 614 of the Act provides a mechanism for modifying markets for cable TV must-carry, Section 338 does not explicitly provide for such a mechanism. The *Notice* asks whether the Commission has the authority to implement a market modification mechanism for satellite carriage purposes. WDBJ submits that the Commission does have such authority, given that implementation of such a mechanism is necessary to promote Congress’ goals of preserving free over-the-air television, and placing cable and satellite operators on relatively equal terms.

First, it is clear that in enacting the satellite carriage portions of SHVIA, Congress intended to strengthen local broadcasters, so that satellite subscribers have access to local programming, and so that free local over-the-air service is preserved for viewers who are not subscribers of satellite service. Indeed, the SHVIA Conference Report states:

... the Conference Committee reasserts the importance of protecting and fostering the system of television networks as they relate to the concept of localism. It is well recognized that television broadcast stations provide valuable programming tailored to local needs, such as news, weather,

special announcements and information related to local activities. To that end, the Committee has structured the copyright licensing regime for satellite to encourage and promote retransmissions by satellite of local television broadcast stations to subscribers who reside in the local markets of those stations.<sup>2</sup>

... the conferees are confident that the proposed license provisions would pass constitutional muster even if subjected to the O'Brien standard applied to the cable must-carry requirement. [Citation omitted] The proposed provisions are intended to preserve free television for those not served by satellite or cable systems and to promote widespread dissemination of information from a multiplicity of sources. .... [Emphasis added] The Conference Committee is concerned that, absent must-carry obligations, satellite carriers would carry the major network affiliates and few other signals. Non-carried stations would face the same loss of viewership Congress previously found with respect to cable noncarriage.<sup>3</sup> [Citation omitted]

A market modification mechanism will further the goal of preserving localism in two ways. First, it will help ensure that satellite carriage markets actually reflect what is truly local, in the limited situations where Nielsen DMAs are not precise for such uses, or when circumstances regarding a market change between the time a particular Nielsen publication determines a market, and the time when the Commission selects use of a more updated Nielsen publication. Second, because use of a market mechanism will assist television stations in reaching additional satellite subscribers, such additional viewership will add to the economic stability of stations, thus allowing them to produce more and better local programming for all viewers, including those who receive the broadcast signal over-the-air.

In addition to promoting Congress' goal of protecting free over-the-air television

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<sup>2</sup> Joint Explanatory Statement of the Committee of Conference on H.R. 1554, 106th Cong. ("Conference Report"), 145 Cong. Rec. at H11792 (daily ed. Nov. 9, 1999).

<sup>3</sup> *Id.* at H11795.

service, enactment of a market modification mechanism would also promote Congress' goal of placing satellite and cable TV operators on reasonably equal terms. That goal is evident by review of the Conference Report, which states that the carriage/licensing requirements of SHVIA "place satellite carrier [sic] in a comparable position to cable systems, competing for the same customers."<sup>4</sup>

In sum, the Commission has the authority to enact a market modification mechanism in order to fulfill Congress' goals in SHVIA. Moreover, in addition to having the authority to do so, enactment of such a mechanism will indeed promote the availability of free over-the-air television service, and the provision of local programming to satellite subscribers.

**III. A Market Modification Mechanism Should Take Into Account The Cable Modification Criteria, and Previous Cable Market Modification Orders.**

The *Notice* asks (at paragraph 16) whether the procedural and evidentiary standards for a satellite market modification mechanism should be the same as those for cable TV market modification mechanisms. WDBJ suggests that as a general matter, the "evidentiary standards" should be similar, in order to be consistent with the principle that satellite and cable TV operators should be placed in similar positions. In looking at the four criteria set forth in Section 614(h) of the Communications Act, and in Section 76.59 of the Commission's rules, WDBJ notes the following:

-Historical carriage on other systems in the same area. Carriage of other stations licensed to the same community as a petitioning station, on the subject satellite system in the target area, should be a relevant criterion: it suggests that the satellite operator considers the Stations' city of license to be in the target community's "local market, and prevents unfair discrimination by the satellite

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<sup>4</sup> *Id.*

carrier among stations in the same market. Historical carriage of the petitioning station on a satellite system other than the system against which the petition is filed should be evidence in favor of a petitioning station, but the Commission should be mindful of the fact that (unlike the facts surrounding cable TV in 1993 when cable must-carry rules were enacted ) there will be little “history” of carriage on satellite systems for any station, at least at this time. However, carriage of the petitioning station on cable TV systems in the target area should be evidence in favor of modifying the station’s satellite carriage market to include that area. Such an approach places the satellite and cable TV operators on relatively equal footing. In addition, such an approach recognizes that if the petitioning station is carried on cable TV systems in the target area as a result of the commercial judgment of the operator, such a judgement is persuasive. Furthermore, if the petitioning station is carried on cable TV systems in the target area as a result of a previous Commission order modifying the petitioning station’s cable TV market, that previous Order should be followed in the context of modifying satellite carriage markets. There is no rational basis for the Commission to find that a station is local for a cable market, but not local for a satellite market.

-Station coverage of or local service to the target community. The Commission has typically interpreted this criterion to mean predicted Grade B signal coverage over the target community by the petitioning station, or broadcast by the station of programming addressing matters specifically impacting the target community. Such a criterion appears to be appropriate for consideration in the context of satellite carriage petitions.

-Coverage by other stations of issues and events of importance to the target community. The Commission has typically interpreted this criterion to apply only in cases where an operator has petitioned to delete a station from a particular market. There is no reason to treat the criterion any differently in the context of satellite carriage markets.

-Evidence of viewing patterns of the station in the target area. The Commission has typically recognized that while this criterion is relevant, it is not determinative, in cable TV market modification proceedings. This appears to be a rational approach for satellite carriage proceedings as well.

In sum, the statutory criteria for cable TV market modification proceedings appear to be relevant in the context of satellite carriage as well, with the exceptions noted above to reflect the lack of “historical” carriage on relatively new satellite systems. In any case, if the petitioning station is carried on cable TV systems in the target area as a result of a previous Commission order modifying the petitioning station’s cable TV

market, that previous Order should be followed in the context of modifying satellite carriage markets.

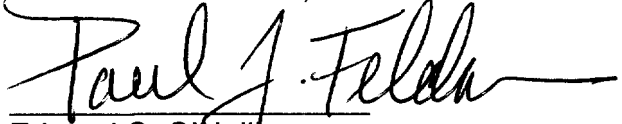
**IV. Conclusion**

The Commission should implement a mechanism to modify "local markets" for the purposes of the carriage obligations set forth in Section 338 of the Communications Act. Such a market modification mechanism would promote Congress' goals of placing cable and satellite operators on an equal footing, and protecting and fostering free local over-the-air television stations.

WHEREFORE, WDBJ Television, Inc. requests that the Commission enact rules as set forth above.

Respectfully submitted,

WDBJ TELEVISION, INC.

  
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